



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

August 16, 1999

Minutes of the August 11, 1999, meeting of the Commission on Governmental Ethics and Election Practices held in the MLRB Hearing Room, PUC Building, 242 State Street, Augusta, Maine.

Present: Chairman: Peter B. Webster; Members: Hon. Virginia Constantine, Linda W. Cronkhite, Hon. Harriet P. Henry, and Hon. Michael E. Carpenter; Director William C. Hain, III; Counsel Phyllis Gardiner; and Commission Assistant Diana True.

Chairman Webster called the meeting to order at 9:05 a.m., noting that Mr. Carpenter would arrive late due to transportation delays.

The Commission considered the published agenda as follows:

Agenda Item #1: Approval of Minutes of July 12, 1999: Ms. Constantine moved, Judge Henry seconded, and the Commission voted unanimously to approve the minutes of the July 12, 1999 meeting.

Agenda Item #2: Representative Stavros J. Mendros Reconsideration: Chairman Webster reported that Representative Mendros had communicated through his sister that he had been unavoidably prevented by travel problems on a trip to Europe from personally presenting his request for reconsideration as requested by his letter received by the Commission on July 27, 1999. Therefore, Judge Henry moved, Ms. Constantine seconded, and the Commission voted unanimously to table further consideration of Representative Mendros' request until the September meeting.

Agenda Item #4A: Vicki J. Purgavie Late Lobbyist Disclosure Report: Mr. Hain reviewed the circumstances of the late filing by Ms. Purgavie of her June 1999 report, following which Ms. Purgavie addressed the Commission regarding the circumstances surrounding that late filing, including the timely filing of a report but on the wrong form. Thereafter, Ms. Constantine moved, Judge Henry seconded, and the Commission voted unanimously to assess a \$100 penalty, mitigated to \$50 based on Ms. Purgavie's previous filing record.

Judge Henry then suggested that the Commission discuss its policy and practice regarding the mitigation of penalties in those circumstances involving first time violations. Counsel Gardiner addressed the issue and reviewed the different statutory bases available to the Commission to apply in mitigating penalties involving lobbyists compared to those for campaign finance report filers (i.e., candidates, PACs, etc.). Mr. Hain and Counsel Gardiner were directed to prepare a synopsis of those provisions for the Commission's review as the basis for further discussion at the September meeting.

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Chairman Webster welcomed Mr. Carpenter upon his arrival, summarizing Mr. Carpenter's distinguished past service in the Legislature and as a former Attorney General, and acknowledged his present private law practice in Houlton and his experience as a law professor. Chairman Webster then introduced the other Members of the Commission to Mr. Carpenter.

Agenda Item #3: Electronic Filing Project and Clean Election Act Implementation Status: Mr. Hain briefed Commission members regarding the status of the electronic filing project, specifically regarding efforts to locate and identify an acceptable "generic" campaign finance reporting database software package for conversion to the Commission's use. Mr. Hain reported that he is scheduled to meet on Wednesday, August 18, 1999, with Tamara Dukes, Director of InforME, the organization with which the State is contracting for public access to statewide Internet services, to review a draft "service level agreement" under which InforME will acquire or license an appropriate software product and have it modified to the Commission's specifications.

Regarding Clean Election Act implementation, Mr. Hain reported that the booklet, "A Candidate's Guide to the Maine Clean Election Act," has been printed and is available for distribution. Mr. Hain also reported that over 100 copies of that booklet had been provided to municipal clerks and registrars at the Secretary of State's annual presentation for those officials in Bangor the previous week, at which Mr. Hain made a presentation on the Maine Clean Election Act. Mr. Hain also requested the Commission's approval to have printed a sufficient supply of the Maine Clean Election Act candidate application forms packets that the Commission had previously approved. Without objection, the Commission's approval was granted.

Agenda Item #5: Kurt Adams, Esq., Request for Commission Guidance on Clean Election Act: Mr. Hain reviewed the substance of Mr. Adams' letter dated August 2, 1999, requesting guidance from the Commission regarding certain points of law and regulation affecting candidates who may wish to be certified under the terms of the Maine Clean Election Act.

Mr. Adams addressed the Commission. After stating that the issues to be presented are "reality problems," not merely hypothetical possibilities, he addressed two points: (1) the exclusion of a potential Clean Election Act candidate by that individual's "inadvertent" acceptance of possibly impermissible contributions; and (2) the permissible options available to a potential Clean Election Act candidate to retire deficit and the permissible extent to which contributions may be accepted to do so.

Counsel Gardiner provided Members with an interpretation of the applicable statutory provisions and the Commission regulations.

Ms. Constantine asked what the ramifications would be on a person's ability to dispose of surplus funds if a "traditional" (non-participating) candidate "drops out as a candidate" to become a "participating" Clean Election Act candidate, and whether section 1017(8) of Title

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21-A could be applicable in such circumstances. Counsel Gardiner responded that that would be a novel approach, but she doubted that the surplus distribution provisions of section 1017(8) would apply in that situation.

Arn Pearson, Staff Attorney for the Maine Citizen Leadership Fund, addressed the Commission. He noted that both issues raised by Mr. Adams had been discussed at length during the Commission's rulemaking process, concluding that only "seed money" may be accepted by a "participating candidate" who applies to become a Maine Clean Election Act "certified candidate," but noted that the rules permit a "good faith" error to be remedied on a case-by-case basis by the Commission. He suggested the possibility of a Commission statement that the rule will be applied leniently, specifically with respect to the Commission's interpretation of the terms "unintentional" and "immediately" in paragraph 3.3.E of Chapter 3 of the Commission's rules. He suggested that the Commission consider interpreting and applying the term "unintentional" to mean "not aware of the statutory requirements," and the term "immediately" to mean "as soon as the candidate became aware or learned of the error."

Mr. Carpenter stated his understanding of the applicable regulatory standard to be that "unintentional" referred not to the receipt of the funds, but rather to a violation of the law; and "immediately" referred to when the candidate became aware of an error and took corrective action.

Mr. Adams then inquired regarding the issue of retiring campaign debt or deficit, suggesting that a candidate be permitted to retire debt until a Declaration of Intent is filed to become a Clean Election Act candidate, and that an "undeclared" candidate be permitted to retire debt and collect "seed money" at the same time until a formal Declaration is filed with the Commission.

Consequently, the Commission concluded that under normal circumstances it would liberally exercise the exception authority in chapter 3, paragraph 3.3.E, of its regulations regarding a candidate who **unintentionally** accepts contributions in 1999 in violation of the "seed money" restrictions, provided the candidate establishes that he/she **immediately** had returned such contributions and had not made expenditures from such contributions in excess of seed money total amount restrictions. The Commission further concluded that a contribution will be deemed to have been "unintentionally" accepted if the candidate establishes that he/she "had not been aware of the statutory requirements at the time the contribution was accepted," and a contribution will be deemed to have been "immediately" returned if the candidate establishes that he/she had returned the contribution "within a reasonable period of time after the candidate became aware of its erroneous acceptance."

The Commission noted that its regulations provide a case-by-case exception, and the guidance provided in a response to Mr. Adams' letter would be subject to the Commission's review of the factual elements of any specific case which it may subsequently consider. In response to Mr. Adams' inquiry concerning the proper disposition of funds "erroneously" received, the

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Commission concluded that subparagraph 3.3.E(4) of its regulations requires that any such contribution be "returned" to its original source.

The Commission noted that a person becomes a "candidate," by definition (21-A M.R.S.A. § 1(5)), by accepting contributions after retiring debt from a previous campaign, and must register as a "candidate" within 10 days. 21-A M.R.S.A. §§ 1013-A(1)(A) and 1017(9)(D) also apply. The Commission concluded that a person who collects funds subsequent to the 1998 election cycle for the purpose of retiring campaign debt would not, by that activity, be a "candidate" as defined by 21-A M.R.S.A. § 1(5) because the purpose in collecting those funds would not be to run as a candidate for the next election, but rather to retire debt from the previous campaign. However, after fully retiring previous campaign debt, if that person accepts contributions other than "seed money" contributions, the acceptance of those contributions would affect the eligibility of that person to participate in the Maine Clean Election Act. Therefore, the Commission concluded that a person would not lose eligibility to participate in the public funding provisions by soliciting and accepting contributions to retire 1998 election cycle debt up to the point at which the person files a Declaration of Intent to participate in the Maine Clean Election Act. Filing a Declaration of Intent would qualify that person as a "participating candidate" and would include an affirmation that the person had "not accepted any contributions, except for seed money contributions, since becoming a candidate."

Chairman Webster advised Mr. Adams that the Commission would provide a response to his letter consistent with the conclusions it had reached.

At 11:05 the Chairman Webster declared a 10 minute recess, noting that personal business required his departure and that Judge Henry had agreed to serve as Acting Chair in Mr. Webster's absence. The Commission reconvened at 11:15, Judge Henry presiding, Mr. Webster absent. Commission Counsel Gardiner was also excused due to personal obligations.

Agenda Item #4B: Bruce Nicholson Late Lobbyist Disclosure Report: Mr. Hain reviewed the circumstances of the late filing of Mr. Nicholson's June 1999 report, referring to Mr. Nicholson's letter of explanation dated July 26, 1999. Thereafter, Mr. Carpenter moved, Ms. Constantine seconded, and the Commission voted unanimously to assess a \$100 penalty, mitigated to \$50 based on Mr. Nicholson's previous filing record.

Agenda Item #7: Status of Lawsuits: Mr. Hain briefed Members regarding a scheduling issue raised by Judge Hornby because of the possible influence of a U. S. Supreme Court case decision on the pending Clean Election Act lawsuit. After conference with all parties, Judge Hornby decided not to alter the schedule. Therefore, oral arguments remain scheduled for September 17, 1999, in Portland.

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Mr. Hain then reviewed miscellaneous matters that had been received for the Commission's consideration after the agenda and supporting materials had been prepared for distribution, including:

- COGEL Annual Conference Agenda: Provided for information only.
- Speaker Rowe Response: By letter dated July 28, 1999, Speaker of the House G. Steven Rowe appointed five Representatives to participate in a review of the Commission's Campaign Finance Reporting form and the development of an electronic filing capability.
- Reporting Recount Legal Cost Expenditures: By letter dated August 5, 1999, Mr. Hain responded to the City of Portland regarding the campaign finance reporting requirements of candidates who receive the benefit of legal services in a municipal election recount process.
- Paul F. Driscoll, Esq. Letter of August 9, 1999: Mr. Driscoll requested the Commission's review and approval of the results of a meeting he had with Mr. Hain to discuss the political action committee registration and reporting requirements applicable to a specific fact situation. Because of the lack of time to review the lengthy letter summarizing that meeting, the Commission unanimously agreed to table consideration of the letter until the September meeting to permit Members to thoroughly review the letter and be prepared to discuss its contents.

Agenda Item #6: Prototype Performance Budget: Mr. Hain briefed Members regarding the requirement for all State departments and agencies to prepare performance budget prototype forms for submission to the Budget Office by September 30, 1999, based on previously prepared goals, objectives, program strategies, and performance measures. Rather than appoint a subcommittee of the Commission, Members unanimously agreed that addressing the matter in greater detail required full Commission participation at the September meeting. Mr. Hain was directed to incorporate sufficient time in the September agenda to meet that requirement.

On motion and unanimous vote, the Commission adjourned at 12:00 p.m.

Respectfully submitted,



William C. Hain, III  
Executive Director